

MICHIGAN OIL CO.

IBLA 85-618

Decided February 25, 1987

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting over-the-counter oil and gas lease offer ES 034726 (Mich.).

Set aside and remanded.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Offers to Lease

Lands which are not within a known geological structure of a producing oil or gas field, or a favorable petroleum geological province in Alaska, which have been previously leased are subject to leasing only under the regulations at 43 CFR Subpart 3112. Those regulations provide that lands which have been offered and for which no applications have been received during the filing period are available for leasing by an over-the-counter lease offer.

APPEARANCES: T. R. Paul, Vice President and General Manager, Michigan Oil Company, Jackson, Michigan.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Michigan Oil Company has appealed a decision of the Eastern States office, Bureau of Land Management (BLM), dated April 23, 1985, rejecting its over-the-counter offer to lease for oil and gas a number of parcels of acquired lands totaling 1,422.45 acres in T. 22 N., R. 10 W., Michigan Meridian, Wexford County, Michigan. The reason stated by BLM for rejecting appellant's lease offer was that the lands "are within a terminated oil and gas lease and are subject to leasing only in accordance with the simultaneous leasing procedures." As grounds for its appeal, Michigan Oil Company argues that the acreage included in its offer should be made available to it because it has expended considerable time and effort in acquiring fee leases to adjacent lands and the potential for oil and gas development in the area is speculative.

[1] The Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1982), provides that, except as governed by the special provisions of the Act, minerals in acquired lands may be leased by the Secretary of the Interior "under the same conditions as contained in the leasing provisions of the mineral leasing laws." *Id.* § 352. The Mineral Lands Leasing Act,

30 U.S.C. §§ 181-287 (1982), requires the Secretary to lease lands within any known geological structure (KGS) of a producing oil or gas field to the "highest responsible qualified bidder by competitive bidding." Id. § 226(b). In Alaska, lands within a favorable petroleum geological province must be leased competitively. 16 U.S.C. § 3148(d) (1982). Rules governing competitive bidding are established by regulation. See 43 CFR Part 3120. Lands available for leasing which are not within a KGS or a favorable petroleum geological province are leased to the first-qualified applicant. 30 U.S.C. § 226(c) (1982). Such noncompetitive leases are issued under two programs established by the Department. See 43 CFR Part 3110. The regulation governing the availability of land for simultaneous leasing, 43 CFR 3112.1-1(a), states:

Except as provided in paragraph (b) of this section and § 3120.1 of this title, all lands which are not within a known geological structure of a producing oil or gas field, or a favorable petroleum geological province in Alaska, and were covered by Federal oil and gas leases which have been cancelled, terminated, relinquished or expired are subject to leasing only under this subpart. The Director may designate other lands which are not within a known geological structure of a producing oil or gas field to be leased in accordance with this subpart.

With the case file for appellant's lease offer, the Eastern States Office forwarded to this Board the closed file for ES-7077. It contains an oil and gas lease issued effective August 1, 1970, covering identical lands. This file establishes that the lands applied for by appellant were within a previously terminated lease. 1/ Accordingly, under the requirements of the quoted regulation, the lands must be leased pursuant to the regulations in 43 CFR Subpart 3112. Thus, BLM correctly determined that the lands had been previously leased and were subject to leasing only in accordance with the simultaneous leasing regulations. James W. Phillips, 61 IBLA 294 (1982); David A. Provinse, 50 IBLA 271 (1980). Because the availability of land for leasing is controlled by the provisions of the cited statutes and regulations and they do not provide for exceptions, appellant's arguments as to why it should receive the lease are not relevant and cannot be given any effect. See Lowell J. Simons, 70 IBLA 128 (1983).

Although BLM correctly ascertained the applicable law, on the basis of the record before us we cannot affirm its decision to reject appellant's lease offer. 2/ While lands from terminated leases must be leased under the

1/ A notation on the lease indicates that its termination was posted Jan. 26, 1981.

2/ Because the Board exercises the review authority of the Secretary of the Interior, 43 CFR 4.1, our review of a decision on appeal is not limited to the issues presented by the parties but may include all relevant matters appearing in the record which are within the authority of the Department. Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261, 262 (1983); United States v. Gassaway, 43 IBLA 382, 388 (1979); El Paso Products Co., 10 IBLA 116 (1973); United States v. Grediagin, 7 IBLA 1, 4 (1972). This may include de novo review of the entire administrative record. United States v. Fish & Wildlife Service, 72 IBLA 218, 220-21 (1983); United States v. Dunbar Stone Co., 56 IBLA 61, 67-68 (1981).

simultaneous filing regulations found at Subpart 3112, included in those regulations is the following provision:

Lands shall be available for leasing under Subpart 3111 of this title where, during the filing period under this subpart, no applications are received for a parcel, provided the lands are not determined to be within a known geological structure of a producing oil or gas field. Such lands shall become available for leasing under Subpart 3111 of this title on the first day of the month following the posting of the results of the selection in the appropriate State office of the Bureau. Where 1 or more applications are received for a particular parcel and no lease issues as a result of such filing, the lands shall be subject to leasing only in accordance with this subpart.

43 CFR 3112.7. No documentation in either the case file for ES-034726 or the file for ES-7077 indicates whether the lands included in appellant's lease offer were ever posted for simultaneous lease applications after the termination of the previous lease and prior to appellant's lease offer. Absent such documentation, we cannot conclude that the lands included in appellant's lease offer were unavailable for leasing under the over-the-counter offer regulations of Subpart 3111. Accordingly, we must set aside BLM's decision and remand the case file for BLM to investigate its records to determine whether the lands have been offered under the simultaneous filing procedures. Jack E. Lea, 49 IBLA 358 (1980).

If BLM finds that the lands have not been offered under the simultaneous filing procedures, then the lands were not available for over-the-counter leasing and BLM may again reject appellant's lease offer. However, given appellant's interest in the land and the period of time since the previous lease terminated, we believe that if the land has not been previously posted, under the simultaneous filing system, then, absent legal impediments such as withdrawal of the land from mineral leasing, placing the lands in the simultaneous pool would be appropriate. See James W. Phillips, *supra* at 295.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to BLM.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge